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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BRIENNE PETCHER, an individual, Plaintiff, vs. UNIVERSITY OF CALIFORNIA, BOARD OF REGENTS; MARGARET WOLFE. Defendants.	CASE NO.: **COMPLAINT FOR DAMAGES** **JURY TRIAL DEMANDED**

Plaintiff Brienne Petcher (hereinafter "Petcher" or "Plaintiff"), by and through her attorneys, alleges as follows:

I.

PARTIES

1. Plaintiff Brienne Petcher is, and at all times mentioned was, an individual resident of the State of California, living in the County of Fresno.

2. Plaintiff is informed, believes, and based thereon alleges that defendant University of California, Board of Regents ("Regents") is the governing body of the University of California. Plaintiff is informed, believes, and based thereon alleges that Regents operates University of California San Francisco Fresno Medical Education and Research, which is a California medical education facility within the county of Fresno, with a principal place of business located at 155 N. Fresno. Street, Fresno, California (hereinafter "UCSF Fresno")

3. Plaintiff is informed, believes, and based thereon alleges that defendant Margaret Wolfe is an individual residing in Fresno, California and the residency program director for UCSF Fresno (hereinafter "Wolfe" or "Defendant").

4. Whenever this Complaint refers to any act or acts of Defendant, the reference shall also be deemed to mean that the directors, officers, employees, affiliates, controlling companies or agents of Defendant authorized such act while actively engaged in the management, direction or control of the affairs of Defendant, and/or by persons who are the alter ego of Defendant, or while acting within the scope of their agency, affiliation, control or employment.

II.

JURISDICTION AND VENUE

5. This Court has jurisdiction under 28 U.S.C. § 1331 over this case, a civil action arising under the Constitution, laws, or treaties of the United States.

6. Venue is proper pursuant to 28 U.S.C. § 1391 because the Defendant Regents resides in this District.

III.

FACTUAL BACKGROUND

7. Brienne Petcher was employed by UCSF Fresno as surgical intern from June 18, 2015 until May 9, 2016, at which time she was informed that she was terminated from the program.

8. On or about May 4, 2015, Petcher and UCSF Fresno entered into a written contract in California. The contract was to be renewed on an annual basis for a period of 5 years to allow Plaintiff to complete her residency program. This contract employed Petcher as surgical resident. The employment agreement is attached hereto as Exhibit A.

9. Petcher's Employment Agreement with UCSF Fresno prescribed and incorporated by reference Academic Due Process Policy in an attempt to comply with the due process rights afforded public employees by the United States Constitution. UC Fresno's Academic Due Process Policy is attached hereto as Exhibit B.

10. On or about January 14, 2016, UCSF Fresno provided a Notice of Concern to Plaintiff. The Notice of Concern outlined two areas of alleged concern. The first area was "Professionalism," and specifically, an accusation that Petcher eavesdropped on a private conversation. The second area was "Ability to Self-Regulate," which was described as "Does not finish tasks in a timely manner and very focused on providing reasons and excuses rather than listening to feedback." The Notice of Concern specifically indicated that data gathering would commence January 15, 2016 through February 15, 2016. UCSF Fresno indicated that if during this period of one month, circumstances warranted, a more heightening level of supervision and scrutiny might lead the program to place Petcher on remediation.

11. At some point in time, Wolfe and UCSF Fresno claim Petcher was placed on remediation and provided notice of said issues. However, Petcher never received any such notice and UCSF Fresno has never produced any such written

notice. This is a violation of UCSF's own due process policy which requires any such notice to be placed in writing. Likewise, UCSF Fresno's action plan for Petcher while on remediation does not exist.

12. On or about March 31, 2016, Petcher was placed on probation. The issues identified for placing Petcher on probation consist of the following: "First, there are at least two instances in which you (Petcher) have carried on patient care without adequate communication to the more senior residents and, in one instances, without adequate supervision; Second, you (Petcher) have been unable to meet the requirements of your remediation without significant urging. Third, there are multiple evaluations which note that you (Petcher) do not answer pages in a timely manner from all levels of residents, nursing staff, etc."

13. The grounds for probation are not the same issues raised in the January 14, 2016 Notice of Concern. Moreover, the March 31, 2016 Notice of Probation contains new issues which never were previously identified in writing. This is shocking given that the probation was and is reportable to the California Medical Board.

14. On or about May 9, 2016, Petcher was terminated but permitted to complete the academic year. The Notice of Termination indicates that specific issues were discussed at a meeting on May 5, 2016 and the decision to terminate was made. The purported grounds for termination consisted of: "First there are instances documented in your evaluations in which you have written in your note of discussions with senior resident regarding patients when in fact the senior resident was not contacted. This is a continued concern reflecting a pattern of disregard for those of who are supervising you as well as a concern for the veracity of your documentation and overall trustworthiness; Inattention to certain consults; Efficiency continues to be a problem; Not ready to round until late in the date; Too much time talking about what needs to be done rather actually getting it done; To do things at pm sign out are sometimes not done until a.m."

15. At no point was Petcher apprised of the issues addressed at the May 5, 2016 meeting or an opportunity to be heard regarding same. Dr. Wolfe has since admitted that in deciding to terminate Petcher's employment, she and others relied primarily on allegations ***preceding*** Petcher's probationary period. She further admitted her expectation that Petcher would be "perfect" during probation. In other words, the entire academic probation was a sham – Petcher was slated for termination regardless of how well she did during probation.

16. As part of the due process policy, Petcher was to be given a hearing on appeal within 45 days. To date, the appeal has only conducted the first date of the hearing on May 4, 2016, almost one year after her termination. At present there is no second date set despite UCSF Fresno claiming it will require at least three hearing dates to put on its case. This does not include the dates then required for Petcher to put on her case as allowed under the due process policy.

17. By its actions and omissions, UCSF Fresno and Wolfe have violated Petcher's procedural due process rights by depriving her of her property interest in her employment without providing her the required pre-deprivation hearing and other due process rights required by the Fourteenth Amendment.

18. Petcher's due process rights, as described above, were clearly established as to alert a reasonable official to their parameters including, for example, by their inclusion in UCSF Fresno's Academic Due Process policy. Wolfe, nor any other reasonable officer, could not have believed her conduct in depriving Petcher of these rights was lawful.

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IV.

FIRST CAUSE OF ACTION

(Violation of Civil Rights, 42 U.S.C. § 1983)

(Against All Defendants)

19. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this Complaint as if fully set forth herein.

20. Petcher had a liberty and property right in and expectancy of continued employment with UCSF Fresno pursuant to the terms of the Employment Agreement, and to expect and receive the salary, benefits, job security, and other rights under the Employment Agreement, which prescribed and incorporated due process policies and procedures. UCSF Fresno has failed and continues to fail to provide the due process rights afforded to Petcher.

21. Petcher's employment with UCSF Fresno was terminated by Defendant without notice, without hearing, or the constitutionally required due process or procedure, without Defendant providing Petcher with an opportunity to learn, hear or refute the alleged charges, reasons, or events which were alleged or made against Petcher and the basis for termination, or the discipline sought to be imposed resulting in her termination. Petcher was unaware of the charges pending against her until after her termination. All of this was a violation of Petcher's procedural due process rights under the Fourteenth Amendment of the United States Constitution.

22. Defendant failed to provide any pre-deprivation hearings or required due process and procedure, and prevented Petcher from being able to refute the alleged charges prior to the issuance the May 9, 2016 letter. The violation of due process promulgated the fictitious charges by preventing any contrary positions or explanations.

23. Petcher is informed, believes, and based thereon alleges that

Defendant acted under color of state law in the actions or omissions against and affecting Petcher as set forth herein.

24. Petcher is informed, believes, and based thereon alleges that Defendant established and maintained an unconstitutional policy, and/or longstanding practice or custom, intended to deprive, or actually depriving, individual employees such as Petcher of constitutional rights, including but not limited to depriving employees of property rights arising from employment and the employment agreement(s) with UCSF Fresno, without a hearing or constitutionally adequate procedure under the United States Constitution, Fourteenth Amendment, Section One, which prohibits defendants from depriving individual employees, such as Anderson, of property rights without due process of law.

25. In doing the acts or omissions as set forth herein, Defendant, through its policies, actions, order and/or directives, intentionally and/or in reckless disregard of Petcher's rights, safety and personal well-being, deprived Petcher of her due process rights under the United States Constitution and its Fourteenth Amendment.

26. As a direct and proximate result of the deprivation of Petcher's constitutional rights by Defendant, Petcher suffered, and continues to suffer, extreme and severe emotional and physical distress, including, but not limited to, pain, grief, shame, humiliation, embarrassment, depression, anger, disappointment, sleeplessness, anxiety, disappointment, damage to reputation, and worry, all to her damage in a sum according to proof against the Defendant. In addition, Petcher's reputation was stigmatized.

27. As a further direct and proximate result of Defendant's deprivation of Petcher's constitutional rights, Petcher suffered special damages, including but not limited to loss of income, severance benefits, and other employment benefits for which she seeks compensatory damages against Defendant in an amount according to proof.

28. Petcher is informed, believes, and based thereon alleges the foregoing conduct by Defendant was performed and done intentionally, and/or in conscious disregard of Petcher's rights, with oppression, fraud, or malice, thereby justifying an award of punitive damages against Defendant according to proof. This is evidenced by the failure by UCSF Fresno to follow its own due process policy, failing to provide notice of the grounds for termination to Petcher in advance of her probation, failure to provide written notice of Petcher's alleged placement on remediation and failure to complete its required appeal hearing within 45 days but rather to first begin the hearing almost a year after Petcher has been terminated and remains unable to rejoin any residency program.

29. As a further proximate result of Defendant's conduct, Petcher was required to retain counsel to prosecute this action, the reasonable attorney fees for which are sought under 42 U.S.C. § 1988(b), according to proof.

V.

SECOND CAUSE OF ACTION

(Breach of Contract)

(Against University of California, Board of Regents)

30. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this Complaint as if fully set forth herein.

31. On or about May 4, 2015, Petcher and UCSF Fresno entered into a written contract in California. The contract was to be renewed on an annual basis for a period of 5 years to allow Plaintiff to complete her residency program. This contract employed Petcher as surgical resident.

32. Petcher's Employment Agreement with UCSF Fresno prescribed and incorporated by reference Academic Due Process Policy.

33. UCSF Fresno breached the employment agreement by, among other things, violating its own Academic Due Process Guidelines, as described above.

34. As a direct and proximate result of Defendant's deprivation of Petcher's constitutional rights, Petcher suffered general and special damages, including but not limited to loss of income, severance benefits, and other employment benefits for which she seeks compensatory damages against Defendant in an amount according to proof.

VI.

PRAYER FOR RELIEF

WHEREFORE, Petcher prays for judgment against Defendants as follows:

1. For recovery of general and special damages against the Defendant in an amount to be proven at time of trial, in excess of the jurisdictional minimum;
2. For compensatory damages, including loss of wages, promotional opportunities, benefits and other opportunities of employment, according to proof;
3. For mental and emotional distress damages;
4. For prejudgment interest and costs of suit herein incurred;
5. For punitive damages in an amount to be proven at trial;
6. For reinstatement into the UC Fresno Medical Program;
7. For attorneys' fees where allowable; and
8. For such other and further relief as the Court may deem just and proper.

THE LAW OFFICES OF GEORGE RIKOS

/s/ George Rikos

Dated: May 9, 2017

George D. Rikos
Attorneys for Plaintiff
Brienne Petcher.

EXHIBIT A

UCSF
University of California
San Francisco

UCSF Fresno Medical Education Program
Appointment Contract 2015/2016

Fresno Medical Education Program

Dr.:	Brienne Petcher
Appointment Dates:	June 18, 2015 - June 26, 2016
PG Level:	One
Program:	Surgery
Length of Program:	Five
Program Director:	Meg Wolfe, M.D.
Salary:	$51,871

The following agreement outlines the terms and conditions of your appointment to the University of California, San Francisco Fresno Medical Education Program. References herein to 'housestaff' include "resident and fellow".

Housestaff are employees of the University of California, San Francisco and as such receive financial support from the University of California, San Francisco This contract is contingent upon your timely ability to meet all eligibility requirements as required by law or policy in order to commence the program on the above noted start date as well as our receipt of all documents that you are required to provide by policy and/or current regulation.

Appointments are made on a year-to-year basis. Dates of this agreement are as stated above. Reappointment is determined annually and shall be based on the housestaff's compliance with the program's promotion policy

UCSF Fresno provides effective educational experiences that lead to measurable achievement of educational outcomes and expectations in accordance with ACGME competencies and milestones as outlined in the ACGME common and specialty/subspecialty-specific program requirements. Program directors and faculty of UCSF Fresno adhere to responsibility for resident training and supervision as outlined in ACGME institutional, common and program-specific guidelines.
http://acgme.org/acgmeweb/Portals/0/PDFs/FAQ/InstitutionalRequirements_07012015.pdf
http://acgme.org/acgmeweb/Portals/0/PFAssets/ProgramRequirements/CPRs_07012015.pdf

The Housestaff Portal provides institutional policies and procedures applicable to housestaff appointed to UCSF Fresno. Program-specific policies are available from your program coordinator. Please visit http://www.fresno.ucsf.edu/housestaffportal/gmec.html for all institutional policies. In particular, please note the following policies:

- Conditions for reappointment and promotion Policy
- Conditions on non-renewal of appointment
- Grievance and due process Policy
- Leave Policy (including vacation, sick, education and other leaves)
- Duty hours/Moonlighting

Effects of leave on program requirements and eligibility of certifying exam
Housestaff should discuss the effects a leave may have on their ability to complete program requirements and eligibility to sit for the certifying board exam when discussing the terms of the leave. Information can also be found in the leave policy and at the following site http://www.fresno.ucsf.edu/housestaffportal/boardelig.html

Benefits
Health and disability benefits are provided beginning on your first officially-recognized day of employment. Details about benefits can be found on the Housestaff Portal
http://www.fresno.ucsf.edu/housestaffportal/links.html

Specific program conditions may apply
Please refer to your Program Director or Program Coordinator for policies and procedures or additional resources specific to your individual specialty, program or department.

Professional liability insurance
Residents are covered for professional liability as provided by the Regents of the University of California self-insurance program for claims which occur within the course and scope of the resident's employment (provided fraud, corruption, tortuous acts or malice on the part of the individual is absent). UC malpractice does not cover private professional activity outside the educational program. Details of professional liability coverage are available at
http://www.fresno.ucsf.edu/housestaffportal/documents/RM_PL_Insurance_Certificate.pdf

Housestaff Handbook
The Housestaff Handbook describes institutional standards, procedures and expectations applicable to housestaff at UCSF Fresno. Please review the handbook
http://www.fresno.ucsf.edu/housestaffportal/gmec.html for details on the following areas:

- Duties/Operational Standards
- Housestaff General Educational Responsibilities
- Salary/Benefits/Time Off
- Available Services

In return, as housestaff in the UCSF Fresno Medical Education Program, you will be expected to comply with but not limited to, the established UCSF Fresno Handbook, employment policies and the following:

- Participate in institutional programs and activities involving the medical staff and adhere to established practices, procedures, and policies of the program and sponsoring institution and policies of all affiliated hospitals, including the timely completion of all medical records
- Demonstrate responsiveness to patient needs that supersedes self-interest and acknowledge at times this may require transition of care to another qualified and rested provider. Comply with all duty hour requirements established by ACGME and accurately report them to your program.
- Participate in and cooperate with Quality Improvement/Risk Management activities as directed by the Program Director and to provide such information as may be required to fulfill the Quality Improvement/Risk Management efforts of the hospital
- Ensure compliance with current requirements for California medical licensure. UCSF Fresno requires all residents (American and International) to pass USMLE Step III (or equivalent COMLEX) before promotion to their PGY2 year of residency. See licensure policy for details

As a resident in the UCSF Fresno Medical Education Program your signature acknowledges your acceptance of this contract as well as your review of the current UCSF Fresno Housestaff Portal and Handbook (http://www.fresno.ucsf.edu/housestaffportal/) and indicates your agreement to abide by all policies established by UCSF Fresno and partnering facilities

[signature] 5/4/15
Resident Signature — Date

[signature] 7/20/15
Program Director Signature — Date

Recent revisions/approvals by GMEC: 03/2015

EXHIBIT B

University of California
San Francisco

UCSF

Fresno Medical Education Program

GMEC Approval Date: 01/19/2016
Revised: 12/17/2015
Superceded: 07/16/2013
Next Revision Date: 01/19/2019

POLICY: ACADEMIC DUE PROCESS POLICY

DIAGRAM OF REVIEW OPTIONS AND PROCESS

I. INTRODUCTION

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B. DEFINITIONS

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D. NON-RENEWAL AND DISMISSAL PROCEDURES
1. Level One - Informal Review
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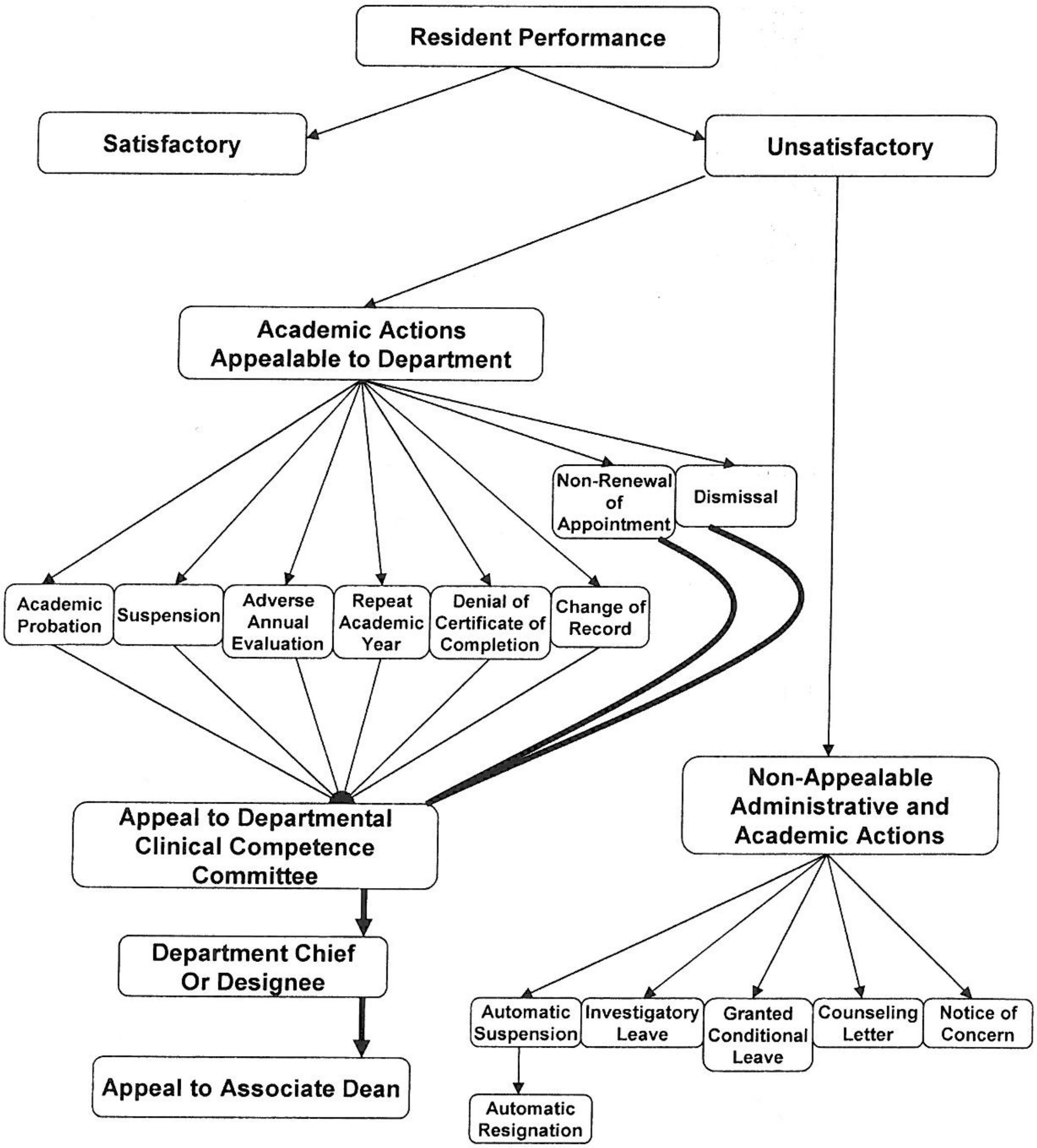
E. APPEAL

F. REMEDY

Grievance and Appeal Procedure for Housestaff Performance Issues



Resident Performance
Satisfactory
Unsatisfactory
Academic Actions Appealable to Department
Non-Renewal of Appointment
Dismissal
Academic Probation
Suspension
Adverse Annual Evaluation
Repeat Academic Year
Denial of Certificate of Completion
Change of Record
Appeal to Departmental Clinical Competence Committee
Department Chief Or Designee
Appeal to Associate Dean
Non-Appealable Administrative and Academic Actions
Automatic Suspension
Investigatory Leave
Granted Conditional Leave
Counseling Letter
Notice of Concern
Automatic Resignation

I. INTRODUCTION

I.A. Preamble and Purpose

Graduate medical education involves the development of professional competencies in a medical specialty as set forth by the Accreditation Council for Graduate Medical Education (ACGME) and its individual Residency Review Committees. These professional competencies include standards of conduct such as professionalism, honesty, punctuality, attendance, timeliness, proper hygiene, compliance with all applicable ethical standards and UCSF Fresno policies and procedures, an ability to work cooperatively and collegially with staff and with other health care professionals, and appropriate and professional interactions with patients and their families.

At the University of California San Francisco, Fresno ("UCSF Fresno") the primary responsibility for remedial academic actions relating to resident physicians and other post-M.D. trainees (hereinafter referred to as "Trainees") and clinical training programs resides within the departments and the individual training programs. Therefore, academic and performance standards and methods of training and evaluation are to be determined by each department and/or program at the University. There may be variances regarding these standards among the various departments and programs. In general, trainees can be disciplined for unacceptable conduct in a variety of categories including but not limited to:

a. incompetence, dishonesty, inadequate knowledge or ability to perform professional activities, complete assigned duties, and deliver proper medical care
b. failure to improve performance in an identified area
c. conduct that violates professional and/or ethical standards and/or the law, including intellectual dishonesty or cheating in scientific or scholarly activities
d. failure to fulfill any term of the employment contract or comply with rules or policies of the training program, university, or training site
e. disruptive behavior; forcible detention, threats of physical harm to, or harassment of another member of the UCSF Fresno community
f. unauthorized use of UCSF Fresno resources or facilities on a significant scale for personal, commercial, political or religious purposes

Trainees and their supervisors are encouraged to discuss their concerns with one another and, if there are any disputes or disagreements, Trainees and their supervisors should make efforts to resolve them. The action(s) taken should be the one(s) that in the professional and/or academic judgment of the Program Director best address the deficiencies and needs of the individual Trainee and/or the GME training program. These actions are at the discretion of the department and UCSF Fresno and need not be progressive. The department and/or UCSF Fresno may select those action(s) described below which it deems appropriate.

The procedures set forth below are designed to provide UCSF Fresno trainees an orderly means of resolving differences. These Guidelines apply to all University-sponsored programs of Graduate Medical Education (GME). These Guidelines shall be the exclusive remedy for appealing reviewable academic actions at UCSF Fresno. Deviation from these procedures that does not result in material prejudice to the Trainee will not be grounds for invalidating the action taken. Some actions may require obligatory disclosure by the Trainee, institution, or training program in response to external inquiries, including those of state licensing boards or health care institutions. Additional time in the GME training program or beyond the expiration of the Trainee's appointment may be required to meet the educational objectives and certification requirements of the department or the specialty. The Trainee will be notified in writing of any requirements for additional time. Funding for additional time extending beyond the original period of appointment will be permitted only at the discretion of University and upon written confirmation by the Program Director with concurrence of the Chief. Unless otherwise approved by the Program Director, academic credit will be given only for full participation in the regular program.

A Trainee, as part of his or her GME training program, may have responsibilities in a hospital, other clinical setting, or research area. All such appointments, either initial or continuing, are dependent upon the Trainee maintaining good standing in a GME training program. Dismissal from a GME training program will result in the Trainee's automatic dismissal from any and all related appointments such as medical staff membership.

The Grievance and Appeals Procedure flow diagram underscores that most actions are either non-appealable, or may be appealed to the Department Chief. Only non-renewal of appointment and dismissal from the training program are appealable to the Associate Dean's office. The structure of this policy follows that of the diagram.

I.B. Definitions

Academic Deficiency: The terms "Academic Deficiency" and "Deficiencies" mean unacceptable conduct or performance, in the professional and/or academic judgment of the Program Director including failure to achieve adequate progress or maintain good standing in the GME training program, or achieve and/or maintain professional standards of conduct as stated below.
Associate Dean: The term "Associate Dean" refers to the Associate Dean for UCSF Fresno Medical Education or his/her designee.
Chief: The term "Chief" means the Chief of the Trainee's specialty or subspecialty department, or his/her designee.
Clinical Competence Committee: The term "Clinical Competence Committee" means a regularly constituted committee of the School of Medicine or department that reviews the academic performance of Trainees, or a committee of faculty members specially selected by the Committee for the purpose of reviewing the academic performance of Trainees.
Competencies: The term "competencies" refers to the specific knowledge, skills, behaviors and the appropriate educational experiences required of residents to complete GME programs as defined by the Accreditation Council for Graduate Medical Education (ACGME 9/29/2010):

a. **Patient Care** that is compassionate, appropriate, and effective for the treatment of health problems and the promotion of health
b. **Medical Knowledge** about established and evolving biomedical, clinical, and cognate (e.g. epidemiological and social-behavioral) sciences and the application of this knowledge to patient care
c. **Practice-Based Learning and Improvement** that involves investigation and evaluation of their own patient care, appraisal and assimilation of scientific evidence, and improvements in patient care
d. **Interpersonal and Communication Skills** that result in effective information exchange and teaming with patients, their families, and other health professionals
e. **Professionalism**, as manifested through a commitment to carrying out professional responsibilities, adherence to ethical principles, and sensitivity to a diverse patient population
f. **Systems-Based Practice**, as manifested by actions that demonstrate an awareness of and responsiveness to the larger context and system of health care and the ability to effectively call on system resources to provide care that is of optimal value

Days: The term "days" means calendar days.
Duty Hours: Duty hours are defined as all clinical and academic activities related to the program; i.e., patient care (both inpatient and outpatient), administrative duties relative to patient care, the provision for transfer of patient care, time spent in-house during call activities, and scheduled activities, such as conferences. Duty hours do *not* include reading and preparation time spent away from the duty site. (ACGME 9/29/2010).
Dismiss or Dismissal: For the purposes of Part III.A.2 of this Policy, the terms "dismiss" or "dismissal" mean expulsion from a GME Training Program.
GME Training Program: The terms "graduate medical education training program" or "GME training program" refer to the second stage of medical education, during which medical school graduates are prepared for independent practice in a medical specialty. The foremost responsibility of the GME training program is to provide an organized education program with guidance and supervision of Trainees,

facilitating the Trainees' professional and personal development while ensuring safe and appropriate care for patients.

Grievance: A grievance is defined as a complaint by a trainee that alleges that: (1) a specific administrative act was arbitrary or capricious and adversely affected the trainee's then-existing terms or conditions of appointment; and/or (2) a violation of applicable University rules, regulations, or policies that adversely affected the trainee's then-existing terms or conditions of appointment. For the purposes of this policy, an act is not arbitrary or capricious if the decision-maker exercised reasoned judgment.

HIPAA: The acronym "HIPAA" refers to the "Health Insurance Portability & Accountability Act of 1996", which mandates significant changes in the legal and regulatory environments governing the provision of health benefits, the delivery and payment of healthcare services, and the security and confidentiality of individually identifiable, protected health information. Trainees are required to undergo HIPAA training.

- Disclosure of protected health information, even where authorized by the regulations, must be limited to the "minimum necessary" to accomplish the purpose for which it is made. Note: this standard does not apply to requests by health care providers for treatment purposes.
- Patients have a right to receive a written notice at each visit describing the entity's privacy practices; access, inspect and copy their health records,; request corrections/amendments to their health information; receive an accounting of disclosures of PHI, and; request restrictions on the use and disclosure of their protected health information.
- Protected health information can only be disclosed (1) after having the patient sign a consent or authorization to permit a particular use or method of disclosure, or (2) after "de-identifying" the information by removing the patient's name, address, telephone, birth date, social security number, names of relatives, names of employers, medical record numbers, health plan beneficiaries, and account number.

Failure to comply can result in civil and criminal monetary penalties of up to $250,000 and one to ten years of imprisonment.

A more comprehensive description of HIPAA and its requirements is available at http://www.ucsf.edu/hipaa/ and by the HIPAA compliance officers in each clinical department.

Medical Disciplinary Cause or Reason: The term "medical disciplinary cause or reason" applies to a Trainee who holds a license from the State Medical Board of California and means that aspect of a licentiate's competence or professional conduct that is reasonably likely to be detrimental to patient safety or to the delivery of patient care in accordance with Business and Professions Code section 805. Any resident with a probationary medical license must disclose this to the Program Director and the Associate Dean.

Non-Renewal of Appointment: A Trainee's appointment is for one year and is reviewed prior to the end of the seventh month of the contract. If the Program Director with concurrence of the Chief determines that the trainee is not progressing satisfactorily, he/she has the option of not renewing the Trainee's contract.

Professionalism: The term "professionalism" comprises a set of values manifest in behaviors that:

- demonstrate respect, compassion, and integrity; a responsiveness to the needs of patients and society that supercedes self-interest; accountability to patients, society, and the profession; and a commitment to excellence and on-going professional development;
- demonstrate a commitment to ethical principles pertaining to provision or withholding of clinical care, confidentiality of patient information including HIPAA requirements, informed consent, intellectual honesty and business practices, including refraining from unauthorized use of university resources, conformance and reporting of duty hours;
- demonstrate sensitivity and responsiveness to patients' culture, age, gender, and disabilities; and
- demonstrate effective working relationships with members of the health care team, including respectful treatment of patients, colleagues, faculty and staff.

Program Director: The one physician designated with authority and accountability for the operation of the residency/fellowship program. (ACGME 9/29/2010)
Reportable Incident: A reportable incident is defined as any event that is outside the normal bounds of professional practice or conduct (e.g., absence without leave, criminal misconduct, disruption of the health care team, dereliction of duty, dishonesty, endangerment of patient health and safety, verbal or physical abuse, substance abuse, and/or harassment).
Trainee: The term "Trainee" refers to any individual appointed by the University's School of Medicine to the titles of Resident Physician I-IX (title codes 2708, 2724), Chief Resident Physician (title code 2725), Resident Physician/Subspecialist IV-IX (title code 2726), Other Post-MD Trainee II-IX (title codes 2732), where specified by campus guidelines, or any other GME title assigned by UCSF.

II. ADMINISTRATIVE ACTIONS, NON-APPEALABLE ACADEMIC ACTIONS, AND ACTIONS APPEALABLE TO THE DEPARTMENT

II.A. Administrative Actions

II.A.1. Automatic Suspension

The Trainee will automatically be suspended from the GME training program for any of the following reasons:

a. failure to complete and maintain medical records as required by the medical center or site in accordance with the center's/hospital's medical staff bylaws and/or rules and regulations; or
b. failure to comply with HIPAA requirements; or
c. failure to comply with state licensing requirements of the California State Medical Board after housestaff have been restricted to non-clinical duties, used vacation or other appropriate leave if available; or
d. failure to obtain or maintain proper visa status or to provide visa or license verification; or
e. unexcused absence from the GME Training Program for five or more days.

The period of automatic suspension should not exceed ten (10) days; however, other forms of administrative or academic action may follow the period of automatic suspension.

The Program Director or designee will promptly notify the Trainee of his/her automatic suspension in writing. In addition, for subsections b, c, d and e above, the Trainee will be provided the facts upon which the suspension is based and a written notice of the intent to consider the Trainee to have automatically resigned at the end of the suspension period (see Part II.A.2. below). The Trainee may utilize the suspension period to rectify (a) or to respond to the notice of intent under (b), (c) or (d) which may include correcting the problem identified in (b) or (c). If the Trainee is suspended under (a) and does not complete the medical records as required within the ten (10) day suspension period, other administrative or academic action may be instituted, including automatic resignation.
The Trainee will not receive any academic credit during the period of automatic suspension. The Trainee stipend will continue to be paid while the Trainee is on automatic suspension status.

II.A.2. Automatic Resignation

Automatic resignation will follow automatic suspension from the GME training program if the problem has not been rectified and will not entitle the Trainee to the procedures contained in Part III of these Guidelines. Failure of the Trainee to provide verification of an appropriate and currently valid visa or verification of current compliance with state licensing requirements of the state Medical Board of California during the 10-day automatic suspension period may result in the Trainee's automatic resignation from the GME training program.

Trainees are expected to communicate directly with the Program Director in the event he or she is unable to participate in the training program for a period of time in excess of 48 hours. The Program Director may grant a leave in times of exceptional circumstances. If the Trainee is absent without leave, the Program Director should inform the Trainee by the 5th day of absence that if a written explanation is not received by the 10th day of absence, then automatic resignation will result. Automatic resignation is effective on the 10th day of absence and the Trainee's stipend will continue for 10 additional (20 total) days. If a written explanation is received by the department within ten (10) days of the first day of absence without leave, the Program Director or designee will review the explanation and any materials submitted by the Trainee regarding the absence and will notify the Trainee of his/her decision within ten (10) days. Failure to explain in writing and adequately document the unexcused absence to the satisfaction of Program Director or designee in the specified time frame will result in the Trainee's automatic resignation from the GME training program. The Trainee's stipend will continue to be paid for twenty (20) days after the absence, or, if a written explanation is received within the specified timeframe, the stipend will continue to be paid until the matter is resolved.

If a resident resigns from training in the program, he/she waives his/her rights to move through the grievance/appeal process.

II.A.3.Leaves

Investigatory leave and conditional leave of absence are not intended to replace any leaves that a Trainee may otherwise be entitled to under state or federal law, or UCSF policy.

Investigatory Leave. A Program Director may place a Trainee on investigatory leave in order to review or investigate allegations of deficiencies or in circumstances where, in the judgment of the Program Director, the Trainee may pose a threat to public, patient or staff health or safety, in situations where the Trainee's own health or safety may be compromised, or where uncertainty exists regarding the trainee's ability to meet program expectations. The leave will be confirmed in writing, stating the reason(s) for and the expected duration of the leave. The alleged deficiency should be of a nature that warrants removing the Trainee from the GME training program. The Program Director should, as soon as practicable under the circumstances, complete an investigation and either return the Trainee to the program or initiate further action under these Guidelines. The Trainee will be paid for the period of investigatory leave.

Conditional Leave. A conditional leave of absence from the GME training program may be provided only under exceptional circumstances, upon the Trainee's written request, and at the Program Director's discretion with concurrence of the Chief. At the end of the conditional leave, the Program Director will determine whether to re-admit the Trainee conditionally, unconditionally, on probation, or to seek the Trainee's dismissal pursuant to the procedures contained in these Guidelines. The Trainee will not be paid a stipend for the period of the conditional leave. Potential uses of conditional leave include, but are not limited to, illness beyond sick leave limitations, personal leave to care for a personal or family emergency, or pursuit of an educational opportunity not related to the training program. In granting the request for leave the Program Director will specify in writing the acceptable time frame and any conditions for return.

II.A.4. Reportable Incidents

When a reportable incident involving a resident or fellow occurs, it shall be promptly reported to the Residency Program Director and the Associate Dean. If criminal conduct or threats to patient or staff safety are involved, hospital security/local police should be contacted immediately and UCSF Fresno risk management should be contacted as well. In addition, some incidents may require obligatory reporting by the institution to external agencies or disclosure in response to external inquiries, including those of state licensing boards, health care institutions, the National Practitioner Data Bank, or law enforcement agencies. Any time a trainee's performance or conduct is judged to be detrimental to the care of patients, the Residency Program Director will promptly provide written notification to the site directors at affiliated hospitals and to the Associate Dean.

Investigating minor reportable incidents. This includes incidents that may not directly jeopardize patient health and safety but are worrisome and concerning to those involved (e.g., unprofessional and disrespectful communications with patients or members of the health care team). The Program Director shall investigate in consultation with the Associate Dean. At a minimum, the Program Director shall collect as much information as possible about the incident from those directly involved and shall report findings to the residency program committee, the department Chief, and the Associate Dean.

Appropriate action under the applicable academic policy and any other University Policies or regulations shall be taken.

Investigating serious reportable incidents. These include unprofessional behavior that jeopardizes patient health and safety, the effective functioning of the health care team and/or involves criminal misconduct. When serious concerns or complaints arise, an investigation should commence immediately. If criminal misconduct or threats to patient or staff safety are involved, hospital security/local police should be contacted immediately and UCSF Fresno risk management should be called as well. The Program Director, the Associate Dean, Campus Counsel, hospital Medical Director, UC Risk Management office, and UCSF Investigation Group may also need to be involved. In addition, at the discretion of the Campus Counsel, information about the incident under investigation may be shared with other appropriate University individuals at training sites where the Trainee would be rotating during the course of the investigation.

The investigation may include but is not limited to: 1) interviewing everyone involved in the incident including the resident or fellow, 2) placing the resident or fellow on investigatory leave, and/or any other appropriate actions under University Policy. Once the incident has been investigated, appropriate University Policies shall be followed and monitored by the Program Director and the Associate Dean.

In extraordinary circumstances, the university may have compelling reasons to take over an investigation and dismissal proceedings of a Trainee. Such circumstances might include criminal misconduct by a Trainee or inability of program faculty to complete a thorough and impartial investigation and dismissal determination. In such instances, the Associate Dean in consultation with Campus Counsel will investigate, and if need be, convene an ad hoc review panel of three residency program directors that are from other departments to make a finding of fact and a recommendation regarding appropriate actions that might include reinstating the Trainee, placing the Trainee on probation, dismissing the Trainee or other actions deemed appropriate. The Trainee would still be entitled to all relevant grievance and appeal procedures. Following a factual determination and institution of discipline, unless the discipline is dismissal, information relating to the action should be shared with the UC Risk Management office or other appropriate University individuals at training sites where the Trainee will rotate.

II.B. Non-Appealable Academic Actions

The following actions are non-reviewable and may or may not be used sequentially: 1) Counseling Letter, 2) Notice of Concern.

II.B.1. Counseling Letter

A counseling letter may be issued by the Program Director to a Trainee to address an academic or professional deficiency that needs to be remedied or improved. The purpose of a counseling letter is to describe a single instance or pattern of problematic behavior or interaction and to recommend actions to rectify the behavior. The Program Director will review the counseling letter with the Trainee. Failure to achieve immediate and/or sustained improvement, or a repetition of the conduct may lead to other disciplinary actions. These actions are determined by the professional and academic judgment of the Program Director and need not be sequential. For the purposes of this policy and for responses to any inquiries, a counseling letter does not constitute a disciplinary action.

II.B.2. Notice of Concern

A notice of concern may be issued by the Program Director to a Trainee who is not performing satisfactorily. Notices of concern should be in writing and should describe the nature of the deficiency and any necessary remedial actions required on the part of the Trainee. A Letter of Concern is typically used when a pattern of problems emerges. The Program Director will review the notice of concern with the Trainee. Failure to achieve immediate and/or sustained improvement, or a repetition of the conduct may lead to additional actions. This action need not follow a letter of concern nor precede other academic actions described later in this document, and does not constitute a disciplinary action.

II.C. Academic Actions Appealable to the Department

Trainees that do not meet acceptable levels of professional competence or do not progress at a satisfactory pace may be subject to the following academic actions that are appealable to the Department's Clinical Competence Committee: 1) Academic Probation, 2) Suspension, 3) Adverse Annual Evaluation, 4) Requirement that Trainee Must Repeat an Academic Year, and 5) Denial of a University Certificate of Completion of Training. The Department Clinical Competence Committee is advisory to the Department Chief. Some actions may require obligatory disclosure by the Trainee, institution, or training program in response to external inquiries, including those of state licensing boards or health care institutions.

II.C.1. Academic Probation

Trainees who are in jeopardy of not successfully completing the requirements of a GME training program may be placed on academic probation by the Program Director. Conditions of academic probation will be communicated to the Trainee in writing and should include: a description of the reasons for the probation, any required remedial activity, and the specific time frame for the required remedial activity. Failure to correct the deficiency within the specified period of time may lead to an extension of the probationary period or to other academic actions. Probation should be used instead of a notice of concern when the underlying deficiency requires added oversight.

II.C.2. Suspension

The Program Director or Chief may suspend the Trainee from part or all of the Trainee's usual and regular assignments in the GME training program, including, but not limited to, clinical and/or didactic duties, when the removal of the Trainee from the clinical service is required for the best interests of patients, staff and/or Trainee. The suspension will be confirmed in writing, stating the reason(s) for the suspension and its duration. Suspension generally should not exceed sixty (60) calendar days. Suspension may be coupled with or followed by other academic actions. The Trainee's stipend will continue to be paid while the Trainee is on suspension status.

II.C.3. Adverse Annual Evaluation

A Trainee may request a review by the Department Clinical Competence Committee for an annual evaluation that is adverse (overall unsatisfactory or marginal). Trainees will be notified by the Program Director of any overall marginal or unsatisfactory evaluations or letters sent to their specialty/subspecialty board.

II.C.4. Requirement That Trainee Must Repeat an Academic Year

A Trainee may be required to repeat an academic year in lieu of dismissal from the Program due to unsatisfactory progress in the training program or for other problems. The decision whether to permit the Trainee to repeat an academic year is at the sole discretion of the Program Director with concurrence of the Chief.

II.C.5. Denial of University Certificate of Completion

If the Program Director, in consultation with the Chief, decides not to award the Trainee a University Certificate, the Program Director will notify the Trainee as soon as reasonably practicable of this intent and the basis therefore.

II.C.6. Change of Record

A Trainee may seek a correction or deletion to his/her personal/employee record by submitting a written request to the Program Director for a review by the Department's Clinical Competence Committee. Within thirty (30) days of receipt of such a written request, the Clinical Competence Committee will recommend to the Program Director to either make the amendment or deletion, or inform the individual in writing that the request has been denied. Within thirty (30) days of the Program Director's response, the Trainee may request that the Chief review the request to amend or delete the record. The Chief will respond to the individual in writing within thirty (30) days from the receipt of the review request. If the Chief refuses to amend or delete the record, the Trainee shall have the right to enter into the record a statement setting forth the reasons for the Trainee's disagreement with the record.

II.D. Department Clinical Competence Committee Appeal Procedures

The Trainee will be notified as soon as reasonably possible that s/he has received an overall marginal or unsatisfactory annual evaluation, or is being placed on probation or suspension, or is required to repeat the current academic year, or will not be granted a University Certificate. The Trainee will be informed of the grievance policy and the person to contact if s/he desires to appeal the Program's decision or wishes a change of record.

To request a review of the Program's decision regarding subsection II. C. (1)-(5) above by the Department Clinical Competence Committee, the Trainee must, within ten (10) days from the date of the notice, provide the Chief or Program Director with a written statement detailing the reasons s/he believes s/he should not be placed on academic probation, or should not be required to repeat the academic year, or should not have received an overall marginal or unsatisfactory evaluation, or should be granted a University Certificate of Completion of Training. The Chief or Program Director will convene the Department Clinical Competence Committee to review the Trainee's statement within ten (10) days of its receipt or as soon as practicable. The Trainee must appear at the Department Clinical Competence Committee hearing. Failure to appear in person will be deemed a voluntary dismissal of his/her complaint, acceptance of the academic action, and waiver of the right to appeal. While attorneys are not allowed in the hearing of the Department Clinical Competence Committee, the Trainee may be assisted by another person of his/her choice. The Department Clinical Competence Committee will orally notify the Trainee of its decision within three (3) days of its meeting, and provide the Trainee a written decision within ten (10) days of the oral notification. Prior to notifying the resident of the committee's decision, program directors are encouraged to review the action with the Associate Dean. The decision of the Department Clinical Competence Committee is final.

III. ACADEMIC ACTIONS NON-RENEWAL OF CONTRACT AND DISMISSAL

III.A. Grounds for Action

Trainees may request the Associate Dean to review the following actions after review at the department level: 1) Non-Renewal of an Annual Contract; or 2) Dismissal from the GME Training Program, including termination of appointment at any time for an academic deficiency and/or a medical disciplinary cause or reason.

III.A.1. Non-Renewal of an Annual Contract

If a Trainee's contract is not renewed, whether or not the Trainee has been subject to any other actions, the decision may be appealed to the Associate Dean after review by the departmental Clinical Competence Committee and department Chief.

The Trainee's appointment is for a one-year period, which is normally renewed annually. Due to the increasing level of responsibilities and increasing complexity of clinical care over the course of the Trainee's training, satisfactory completion of prior academic year(s) or rotation(s) does not ensure satisfactory proficiency in subsequent years or rotations. A Trainee may have his/her appointment not renewed at any time there is a demonstrated failure to meet programmatic standards.

The Program Director should provide each Trainee with a written evaluation at least twice per year. The Trainee should be evaluated by the end of the sixth month of the appointment term. If, prior to the end of seven months but not later than February 28, the Program Director with concurrence of the Chief concludes that the Trainee's appointment should not be renewed for the following year, the Program Director will notify the Trainee that his/her appointment will not be renewed for the following academic year. The Trainee will be permitted to conclude the remainder of the academic year unless additional academic action is taken. Decisions not to renew the contract made subsequent to the 7th month, or after February 28th of the calendar year, constitute dismissal from the training program (see below).

III.A.2. Dismissal from GME Training Program

Based on the Program Director's discretion with concurrence by the Chief, a Trainee may be dismissed from a GME training program for academic deficiencies or medical disciplinary cause or reason. This action is appealable to the Associate Dean after review by the departmental Clinical Competence Committee. Reasons for dismissal may include but are not limited to the following:

a. A failure to achieve or maintain programmatic standards in the GME training program;
b. a serious or repeated act or omission compromising acceptable standards of patient care, including but not limited to an act which constitutes a medical disciplinary cause or reason;
c. unprofessional, unethical or other behavior that is otherwise considered unacceptable by the GME training program;
d. a material omission or falsification of a GME training program application, medical record, or University or medical document, including billing records. Any allegation regarding failure to comply with UCSF's billing rules shall be forwarded to UCSF's Corporate Compliance Officer and/or the Office of General Counsel for resolution in accordance with UCSF's Corporate Compliance Program.

III.B. No Duplicate Hearings

If a Trainee's participation in the GME Training Program is denied, terminated or limited for academic or disciplinary reasons, the Trainee shall be entitled to request notice and, as appropriate, review and/or a hearing in accordance with the procedures set forth herein; provided, however, that in no event shall Trainee be entitled to more than one review or hearing of the same action based on the same set of facts under these procedures or pursuant to the Affiliate's Medical Staff Bylaws.

III.C. Notice of Reasons for Non-Renewal or Dismissal

The Trainee shall receive in writing the reasons for non-renewal or dismissal. Such notice shall include whether any action or recommended action, if adopted, shall be taken and reported to the Medical Board of California and/or the National Practitioner Data Bank.

III.D. Non-Renewal and Dismissal Procedures

The procedures contained in Part III.D of these Guidelines apply only to the actions reviewable by the Associate Dean, as listed in Part III.A of these Guidelines. Failure to file a written appeal or notice of action within thirty (30) days will be deemed an acceptance by the Trainee of the academic action and s/he will lose the opportunity to appeal.

III.D.1. Level One - Informal Review

If the Program Director with concurrence of the Chief or his/her designee, determines that grounds exist to non-renew or dismiss a Trainee from the training program, the Program Director will provide the Trainee with a written notice of the intent to non-renew or dismiss. This notice will include a statement of the reason(s) for the intended non-renewal or dismissal, a copy of the materials upon which the intended non-renewal or dismissal is based, and a statement that the Trainee has a right to respond in writing to the Chief or his/her designee within ten (10) calendar days of receipt of the notice. If the Trainee submits a written response within the ten-day period, the Chief or his/her designee will review it. After reviewing the Trainee's written response (if any), the Chief will decide whether non-renewal or dismissal is appropriate. Within ten (10) days thereafter, the Program Director will notify the Trainee of the Chief's (or his/her designee's) decision by letter, which shall also be copied to the Associate Dean. If the decision is to uphold the proposed dismissal, the letter should include the reasons for upholding the proposed non-renewal or dismissal, provide the effective date of the non-renewal or dismissal, and include a copy of these guidelines. Attempts at informal resolution shall not extend the time limits for filing a formal grievance unless the Trainee and the Program Director so agree, or upon the approval of the Associate Dean. The Trainee will continue to receive regular stipends until the effective date of the non-renewal or dismissal.

III.D.2. Level Two - Formal Review

If the Trainee wishes to appeal the decision to non-renew or dismiss, the Trainee ("Complainant") must file a written appeal with the Associate Dean no later than twenty (20) days after the Chief's decision is received by the Trainee. The written complaint should explain concisely why the Complainant believes the Chief's decision was unfounded or arbitrary and capricious, and should address each specific reason for the dismissal set forth in the Program Director's notice of intent to dismiss.

The Complainant may be assisted or represented by another person at his or her own expense. UCSF Fresno may also be represented. If the Complainant is represented by an attorney, he/she shall notify the UCSF Fresno within twenty (20) days prior to the hearing (or ten (10) days prior to the prehearing conference as specified below. The Complainant must appear in person at the hearing, for the full duration of the hearing, even when represented. Except for good cause, as determined by the Ad Hoc Formal Review Committee, the failure of the Trainee to appear in person at the hearing will be deemed a voluntary dismissal of his/her complaint.

Within ten (10) days of receipt of the appeal, or as soon thereafter as is practicable, an Ad Hoc Formal Review Committee shall be appointed by the Associate Dean to hear the complaint. The Committee will consist of three to five members, at least one of whom shall be a member of the full-time faculty, one senior trainee (PGYIII or higher), and one member of the GMEC. The Associate Dean will designate one of the Committee members to be the Committee Chair. If possible, one of the Committee members should be from the same department as the Complainant. In addition, individuals who were substantially involved in any earlier review of the issues raised in the complaint, or who were substantially involved in any incident underlying the grievance should generally not sit as a member of the Committee. The Committee may, at its discretion, request that an attorney from the Office of the General Counsel be appointed to provide independent legal counsel to the Committee. This attorney shall not vote in the Committee's deliberation process. The Committee will handle all procedural matters during the pendency of the hearing. At all other times, the Associate Dean will resolve all issues related to these procedures.

The Hearing will ordinarily be held within forty-five (45) days of receipt of the appeal by the Associate Dean. An extension may be granted by the Associate Dean if necessary. Unless otherwise agreed by the Parties and the Chair of the Committee, the Complainant and his/her advocate(s), if any, will meet at least fifteen (15) days prior to the Hearing at a prehearing conference with the Committee Chair and the UCSF Fresno representative and UCSF Fresno advocate(s) (if any) to agree upon the specific issues to be decided by the Committee. Absent a showing of good cause, these issues will be limited to the reasons stated in the written notice of intent to dismiss (III.C) and the Trainee's written response to that notice (III.D.2). If the parties are unable to reach an agreement on the issues to be decided, the Committee Chair will determine the issues to be reviewed. At this conference, the parties may raise other procedural and substantive issues for decision by the Chair. The Chair may be advised by university counsel.

At least seven (7) days prior to the Hearing, or at another date agreed to by the Parties and the Chair of the Committee, all documents to be introduced as evidence at the hearing and names of all witnesses shall be exchanged. With the exception of rebuttal witnesses and documents used in rebuttal, any witnesses not named and documents not exchanged seven days before the hearing may, at the Committee Chair's discretion, be excluded from the Hearing.

The Hearing will provide an opportunity for each party to present evidence and to cross examine witnesses. The Committee Chair has broad discretion regarding the admissibility and weight of evidence and is not bound by federal or state rules of evidence. The Committee Chair will rule on all questions of procedure and evidence. The hearing will be recorded on audio tape by the UCSF Fresno unless both parties agree to share the cost of a court reporter, or one party elects to pay the entire cost for the court reporter in order to have a transcript for its own use, in which case the other side may purchase a copy of the transcript for half the cost of the court reporter and transcription, plus any copy costs. The Complainant may listen to the audio tape and may purchase a copy of the audio tape. The Associate Dean, or his/her designee, will be the custodian of the audio tape and/or any stenographic records, and will retain the recording for five (5) years from the time the Associate Dean's decision becomes final.

Unless both the Complainant and the University agree to an open hearing, the hearing will be closed. All materials, reports and other evidence introduced and recorded during the course of a closed proceeding may not be disclosed until the final resolution of the complaint under these procedures except as may be required by applicable law. At the request of either party or the Committee Chair, only the witness testifying may be present and other potential witnesses will be excluded temporarily. However, the Complainant, his/her advocate(s) and the University's representative(s) and its advocate(s) will at all times have the right to attend the hearing.

The Complainant has the burden to prove by a preponderance of evidence that the dismissal was not reasonable, nor based upon all the facts and circumstances of the case, (i.e., arbitrary and capricious) through documentary and testimonial evidence. The University will present evidence in support of the Program Director's decision. Thereafter, the Complainant will present his/her evidence. The parties shall have the opportunity to present rebuttal evidence. The Committee Chair has the right to limit rebuttal evidence in his/her discretion. At the discretion of the Committee, briefs may be submitted. The Committee Chair will determine the appropriate briefing schedule (if any). If briefs are not requested, each party shall have the opportunity to present a closing statement. Following the close of the Hearing, including receipt of any briefs, the Committee will present its written recommendation(s) to the Complainant, the Chair, Program Director and the Associate Dean. The recommendation(s) should occur, absent unusual circumstances, within fifteen (15) days of the Hearing's conclusion, or if briefs are submitted, within fifteen (15) days of the date the briefs are submitted.

The Committee will evaluate the evidence presented and shall prepare a recommended decision which shall contain written findings of fact and conclusions. The action of the Program Director, as approved by the Chair, will be upheld if the Committee finds that the Trainee has not met his/her burden and established by a preponderance of the evidence that the Chair's decision was arbitrary and capricious. The recommended decision shall become final after fifteen (15) days unless appealed pursuant to part III. E.

III.E. Appeal

Within fifteen (15) days of receipt of the Committee's recommendation(s), either party may submit a final written appeal of the Committee's decision to the Associate Dean. Any such response submitted to the Associate Dean must be limited to:

a. Whether the record presented to the Committee contained sufficient evidence to support the Committee's recommendation; or
b. Whether there is new evidence that could not reasonably have been introduced at the hearing and would be likely to change the result.

After receipt of the Committee's recommended decision, the parties' written response (if any), and the record, the Associate Dean within sixty (60) days, or as soon as reasonable thereafter, will take any action deemed appropriate, including upholding the Committee's recommended decision, rejecting the Committee's recommendation or remanding the matter back to the Committee with instruction for further review and recommendation. The Associate Dean's ultimate decision will be final and will be in writing and shall be sent to the Program Director, the Chief, the Complainant and the Committee Chair and, if the action was taken for medical disciplinary cause or reason, to the Medical Board of California.

III.F. Remedy

If the Complainant is reinstated, the remedy will not exceed restoring the Complainant's stipend payment, benefits, or any rights lost as a result of the action, less any mitigating income earned from other sources.

(Original signed Policy is available in the UCSF Fresno Graduate Medical Education Office)

Michael Peterson, MD, Interim Associate Dean, Chair GMEC